

ACT OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
THE BANKING ACT, 2004

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY MATTERS

1. Application of the Companies Code
2. Functions of the Bank of Ghana

PART II—LICENSING OF BANKS

3. Eligibility restricted to Ghanaian Corporate Bodies
4. Banking licence mandatory
5. Application for licence
6. Provisional approval
7. Invitation to public to subscribe to shares
8. Final approval and issue of banking licence
9. Refusal of licence
10. Time limit for decision on application for banking licence
11. Permissible activities of banks
12. Restrictions on commercial, agricultural or industrial activities and immovable property
13. Grounds for revoking licence
14. Revocation procedure
15. Moratorium due to revocation of licence
16. Sanctions for unauthorised banking
17. Use of word 'bank'
18. Inspection of suspected institutions doing banking without licence
19. Display of banking licence
20. Places of business to be licensed
21. Opening of representative office
22. Changes of regulations of banks

PART III—CAPITAL AND RESERVES

23. Capital adequacy
24. Additional capital in respect of special risks
25. Capital adequacy on consolidated basis
26. Notifying non-compliance with capital requirements
27. Penalties for non-compliance with capital requirements
28. Persistent capital ratio deficiency
29. Transfer of profits to Reserve Fund
30. Restrictions on declaration of dividend

PART IV—LIQUIDITY

31. Maintenance of liquid assets
32. Notification of non-compliance with minimum liquidity requirements
33. Penalties for non-compliance with liquidity requirements

PART V—OWNERSHIP AND CONTROL

34. Transfer of shares affecting significant shareholdings
35. Disapproval of transfer of shares
36. Prohibition of transfers of, and changes in, the controlling interests
37. Penalties for non-compliance
38. Disqualification of directors, officers or employees
39. Disclosure of interest
40. Intervention of the Bank of Ghana in appointments

PART VI—RESTRICTIONS ON LENDING AND INVESTMENTS

41. Prohibition of advances against security of own shares
42. Limits on exposures
43. Restrictions on exposure
44. Restrictions on lending to staff
45. Requirements for lending to related parties
46. Restrictions on establishment of subsidiary company
47. Limits on investment in respect of subsidiary companies

48. Limits on investment in respect of other institutions
49. Reporting of large exposures
50. Powers to vary the prudential limits

PART VII—POWERS OF SUPERVISION AND CONTROL

51. Regulations
52. Directives
53. Information and periodic returns
54. On-site examination
55. Investigation or scrutiny
56. Power of on-site examiners
57. Taking custody of records
58. Verification of information
59. On-site examination reports
60. Follow-up action on on-site examination reports
61. Banks to co-operate with conservator
62. Mandatory revocation of banking licence
63. Hearing of banks in matters relating to revocation of licence
64. Issue of final orders after examining a bank
65. Moratorium
66. Appeal to Minister against orders of Bank of Ghana
67. Ceasing of operations following revocation of licence
68. Winding up of bank and appointment of liquidator
69. Voluntary winding-up

PART VIII—ACCOUNTS AND AUDIT

70. Guidelines on accounting standards and disclosures in balance sheet and profit and loss account
71. Accounting records
72. Financial statements
73. Audit of bank's accounting records
74. Appointment of auditors
75. The Bank of Ghana's powers to appoint auditors
76. Auditor's remuneration
77. Auditor's right to information

78. Auditor's report
79. Special audit and additional information
80. Termination of auditor's appointment
81. Display of financial statements

PART IX—MISCELLANEOUS

82. Prohibition of floating charge
83. Secrecy of information
84. Secrecy of customer information
85. Disclosure by the Bank of Ghana of information relating to banks
86. Submission of reports on trend and progress
87. Protection for officials
88. Offences and penalties
89. Joinder of offences
90. Interpretation
91. Repeal of Banking Law, 1989
92. Validity of existing licences

ACT
OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED
THE BANKING ACT, 2004

AN ACT to amend and consolidate the laws relating to banking, to regulate institutions which carry on banking business and to provide for other related matters.

DATE OF ASSENT:

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY MATTERS

Application of the Companies Code

1. (1) This Act shall be in addition to the Companies Code, 1963 (Act 179) and shall not except as otherwise provided in this Act derogate from the provisions of that Code.

(2) Where there is a conflict or inconsistency between the Companies Code and this Act, the provisions of this Act shall prevail.

Functions of the Bank of Ghana

2. (1) The Bank of Ghana shall have an overall supervisory and regulatory authority in all matters relating to banking business and shall be responsible for

- (a) promoting an effective banking system;
- (b) dealing with any unlawful or improper practices of banks, and
- (c) considering and proposing reforms of the laws relating to banking business.

(2) The Bank of Ghana shall establish within its organisation, a Banking Supervision Department.

(3) The Bank of Ghana may authorise the Head of the Banking Supervision Department or any other official or person to exercise a power and do an act that it considers appropriate in order to discharge its responsibilities under this Act.

(4) The Bank of Ghana may, in relation to the operation of a bank, authorise any other person either generally or in respect of a particular matter, to perform a function that otherwise would be performed by the Bank.

PART II—LICENSING OF BANKS

Eligibility restricted to Ghanaian Corporate Bodies

3. No person other than a body corporate incorporated in Ghana shall carry on the business of banking in Ghana.

Banking licence mandatory

4. (1) No person shall carry on the business of banking except by or under the authority of a licence issued in accordance with this Act.

(2) A person who carries on banking business without a licence commits an offence and is liable on summary conviction

- (a) in the case of a body corporate or other body of persons to a fine not exceeding three thousand penalty units; and
- (b) in the case of an individual to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding ten years.

Application for licence

5. (1) An application for a licence shall be made in writing to the Bank of Ghana and shall be accompanied with

- (a) a certified true copy of the Regulations or other instrument relating to the proposed bank or under which a person proposing to carry on banking business was established;
- (b) the names, addresses, and occupations of persons including their corporate affiliations who will hold significant shareholdings, directly or indirectly, in the proposed banking business and the respective values of the share holdings and their certified financial positions;
- (c) the particulars of the directors or key management personnel concerned with the management of the banking business, including their background, certified financial position, business interests and performance of the business concerns under their control or management;
- (d) the feasibility reports including a business plan and financial projections for the first five years and areas of specialisation intended;
- (e) documentary evidence of the capital, their sources and other sources of funds; and

(f) any other particulars that the Bank may require.

(2) The Bank of Ghana may interview the promoter, directors and proposed senior management personnel in the course of an appraisal and may also inspect their books and records to satisfy itself about the representations made or information furnished by the applicant.

Provisional approval

6. (1) The Bank of Ghana may issue a provisional approval to the applicant on the terms and conditions that it considers appropriate, if it is satisfied that

- (a) the applicant will carry on banking business with integrity, prudence and the required professional competence; and
- (b) the applicant has an initial paid-up capital that is required to hold a licence which in the case of a
 - (i) Ghanaian bank, is not less than five billion cedis; or
 - (ii) foreign bank, is not less than eight billion cedis, of which not less than sixty per cent shall be brought into Ghana in convertible currency;
 - (iii) development bank for medium or long term financing is not less than ten billion cedis; or
 - (iv) rural bank, is not less than one hundred million cedis.

(2) The Bank of Ghana may by notice published in the *Gazette*, alter the capital requirements, as well as any other pre-licensing requirements.

Invitation to public to subscribe to shares

7. (1) The applicant shall not invite capital through public issue of shares for the purpose of the proposed banking business unless the provisional approval is given in accordance with section 6.

(2) An applicant who contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1500 penalty units.

Final approval and issue of banking licence

8. The Bank of Ghana shall issue to the applicant a final approval and a licence to carry on banking business, after the Bank of Ghana is satisfied

- (a) with the organisational and infrastructural arrangements made by the applicant, and
- (b) that the applicant has complied with the terms and conditions stipulated in the provisional approval.

Refusal of licence

9. (1) The Bank of Ghana may refuse an application for licence to carry on banking business if the Bank of Ghana is not satisfied with the merits of the application or in view of prevailing conditions in the banking sector or in keeping with its banking policy.

(2) The Bank of Ghana may give reasons for the refusal of an application.

(3) A person whose application is refused, may petition the Minister in writing.

(4) The Minister shall refer the matter to a panel.

(5) The panel shall consist of three experts, one chosen by the Bank and two by the Minister.

(6) The panel shall prepare a report which shall be submitted to the Minister for his decision.

Time limit for decision on application for banking licence

10. The Bank of Ghana shall communicate its decision on an application for a banking business licence within three months from the date of receipt of complete information.

Permissible activities of banks

11. (1) A bank shall not carry on any business other than any of the following:

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (d) investment in financial securities;
- (e) money transmission services;
- (f) issuing and administering means of payment including credit cards, travellers cheques and bankers' drafts;
- (g) guarantees and commitments;
- (h) trading for own account or for account of customers in,
 - (i) money market instruments,
 - (ii) foreign exchange, or
 - (iii) transferable securities;
- (i) participation in securities issues and provision of services related to those issues;
- (j) advice to undertakings on capital structure, acquisition and merger of undertaking;
- (k) portfolio management and advice;
- (l) the keeping and administration of securities;
- (m) credit reference services;

- (n) safe custody of valuables;
- (o) electronic banking; and
- (p) any other services as the Bank of Ghana may determine.

(2) The Bank of Ghana may, by notification, restrict the permissible activities of banks in general or a class of banks or an individual bank or remove the restriction so imposed as it considers appropriate.

Restrictions on commercial, agricultural or industrial activities and immovable property

12. (1) Subject to subsections (2), (3) and (4), a bank shall not directly engage in any commercial, agricultural or industrial undertaking unless it establishes for that purpose a subsidiary company of the bank registered in Ghana.

(2) The equity capital invested in a subsidiary company by the bank shall not exceed fifteen per cent of the net worth of the bank and where the bank has more than one subsidiary company the equity capital invested in those subsidiary companies by the bank shall not exceed in the aggregate twenty-five per cent of the net worth of the bank.

(3) The aggregate amount of any loan, advance, credit or other facility and equity capital which a bank may grant and invest under subsection (2) shall not at any one time exceed

- (a) twenty-five per cent of the net worth of the bank, in the case where the bank owns one subsidiary company; or
- (b) thirty-five per cent of the net worth of the bank, in the case where the bank owns more than one subsidiary company.

(4) A bank shall not build, purchase or take a lease of immovable property except

- (a) for the provision of premises or housing the business or staff of the bank; or
- (b) for the provision of amenities for its staff.

(5) Notwithstanding anything in this section, a bank may accept immovable property as security for any debt or other liability and may acquire an interest which a bank may lawfully acquire in the satisfaction of a debt due to it.

(6) An interest acquired under subsection (5) shall be disposed of by the bank within one year after the acquisition or within a longer period that may be determined by the Bank of Ghana on application made by the bank.

(7) This section does not prevent a bank from letting or subletting a part of immovable property which is ordinarily used for housing its business where the property is in excess of the immediate requirements of the bank.

(8) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1500 penalty units.

Grounds for revoking licence

13. (1) The Bank of Ghana may revoke a licence granted to a bank under section 8, if it is satisfied that

- (a) it has, in connection with the application for the licence, been provided with false, misleading or inaccurate information by or on behalf of the applicant bank or that material information has been suppressed, or
- (b) the bank has failed to fulfill or comply with the terms and conditions stipulated in the licence, or
- (c) the bank has failed to commence business within one year from the date the licence was issued.

(2) The power to revoke a licence in terms of subsection (1) are in addition to and without prejudice to the powers given under section 63 to revoke a licence or take any other penal action under this Act.

Revocation procedure

14. (1) Where the Bank of Ghana proposes to revoke the licence of a bank, it shall give notice in writing to the bank, specifying the proposed action and the grounds on which the action is proposed and give the bank an opportunity to make written representations within thirty days of service of the notice.

(2) After the expiry of the notice period and considering any representations made by the bank, the Bank of Ghana may decide whether to take the proposed action or not, or take a variant of the proposed action that it considers appropriate.

(3) Where the Bank of Ghana revokes the licence of a bank, the bank shall cease to do banking business if it has already commenced banking business and shall surrender the licence.

Moratorium due to revocation of licence

15. Where the Bank of Ghana considers that a delicensed bank is not in a position to make orderly and full payment to its depositors and creditors, it shall simultaneously impose a moratorium on payments under section 66, pending the winding up, or a decision on the future set up of the bank or its appeal.

Sanctions for unauthorised banking

16. A person who carries on banking business without a licence or contravenes section 17 commits an offence and is liable on summary conviction

- (a) in the case of a body corporate or other body of persons to a fine which is equivalent to the amount of deposits received in contravention of this Act, and
- (b) in the case of an individual to a fine which is equivalent to the amount of deposits received in contravention of this Act or to a term of imprisonment not exceeding five years.

Use of word 'bank'

17. (1) A person, other than a bank, shall not describe itself or otherwise hold itself out as a bank, or carry on banking in the country.

(2) The use of the word "bank" in the name of an association of banks or of employees of a bank formed for the promotion of mutual interests of its members shall not be construed as a contravention of subsection (1).

Inspection of suspected institutions doing banking without licence

18. (1) The Bank of Ghana may inspect or cause to be inspected the records of a person, if it has reasonable grounds to suspect that that person is carrying on a form of banking business without holding a valid licence issued under this Act.

(2) Where the Bank of Ghana, upon carrying out the inspection, finds out that there is evidence to prove that an unauthorised banking business is carried on, partly or wholly, the inspecting official may seize the relevant records to facilitate prosecution by the Bank.

Display of banking licence

19. (1) A bank shall display at its head office and all its branches and agencies, copies of the banking licence for the information of the public.

(2) A bank which fails to display at its head office and all of its branches and agencies copies of its banking licence shall pay to the Bank of Ghana a fine of 1000 penalty units.

Places of business to be licensed

20. (1) A bank shall not carry on banking business at a place which is not a place authorised in accordance with this Act.

(2) A bank shall not open, close or relocate

- (a) a branch,
- (b) an agency,
- (c) a mobilization centre, or
- (d) its head office,

for purposes of carrying on banking business unless specifically authorised by the Bank.

(3) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Opening of representative office

21. (1) A foreign bank incorporated abroad shall not set up a representative office in the country, unless it has obtained the prior approval in writing of the Bank.

(2) A foreign bank setting up a representative office shall apply to the Bank of Ghana with the information and documents that the Bank of Ghana may require, including permission from the supervisors in the country where that bank is incorporated.

(3) A representative office permitted to be set up shall not transact any form of banking business in the country.

(4) A foreign bank which does not comply with this section commits an offence and is liable on summary conviction to a fine not exceeding 2,000 penalty units.

Changes of regulations of banks

22. (1) A bank shall, prior to the making of an amendment to its regulations or other instrument under which it was established, furnish to the Bank of Ghana particulars of the proposed amendment for approval.

(2) The bank shall file with the Bank of Ghana, a certified copy of the amendment within one month after it has been effected.

(3) A bank which contravenes this section shall pay to the Bank of Ghana a fine not exceeding 2500 penalty units.

PART III—CAPITAL AND RESERVES

Capital adequacy

23. (1) A bank shall at all times while in operation maintain a minimum capital adequacy ratio of ten per cent.

(2) The Bank of Ghana may by directives prescribe a higher capital adequacy ratio with respect to a particular bank or all banks for the period that the Bank may prescribe.

(3) The capital adequacy ratio shall be measured as a percentage of the adjusted capital base of the bank to its adjusted asset base in accordance with Regulations made by the Bank of Ghana.

Additional capital in respect of special risks

24. The Bank of Ghana may require a bank to maintain additional capital backing as it may consider appropriate in respect of specific concentration of risks.

Capital adequacy on consolidated basis

25. The Bank of Ghana may require a bank which has a subsidiary to calculate and maintain the minimum capital adequacy ratio on a consolidated basis.

Notifying non-compliance with capital requirements

26. (1) Where a bank fails to comply with the prescribed minimum capital adequacy ratio, the bank shall promptly notify the Bank of Ghana of the non-compliance and provide the Bank with the particulars of that non-compliance that the Bank may require.

(2) A bank which fails to notify the Bank of Ghana as required under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Penalties for non-compliance with capital requirements

27. (1) A bank which fails to maintain the level of capital adequacy ratio determined under section 23 is liable to pay to the Bank of Ghana on each day that the deficiency continues as penalty one-half per mille of the difference between the capital adequacy ratio that the bank should have maintained and the level of capital adequacy actually maintained by the bank.

(2) Where the deficiency is not rectified within one hundred and twenty days after it has occurred, the Bank of Ghana may prohibit the bank from granting loans or credits or making investments or accepting deposits.

(3) Each director and chief executive officer of a bank which fails to comply with the minimum capital adequacy ratio commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units that the Bank of Ghana may impose.

Persistent capital ratio deficiency

28. Where the Bank of Ghana, after discussion with a bank is of the opinion that the capital ratio deficiency will persist, the Bank of Ghana shall facilitate merger of the bank with a healthy bank or wind up or take whatever action that the Bank of Ghana considers appropriate.

Transfer of profits to Reserve Fund

29. (1) A bank shall maintain a Reserve Fund into which shall be transferred out of the bank's net profits for each year, before the bank declares a dividend and after it has made provision for any taxes, the following amounts:

- (a) where the amount of the bank's Reserve Fund is less than fifty per cent of its paid-up capital, an amount which is not less than fifty per cent of the bank's net profit for the year;

- (b) where the amount of the bank's Reserve Fund is fifty per cent or more but less than hundred per cent of its paid up capital, an amount which is not less than twenty five per cent of the bank's net profit for the year; or
- (c) where the amount of the bank's Reserve Fund is equal to one hundred per cent or more of its paid-up capital, an amount equal to twelve and half per cent of the bank's net profit for the year.

(2) A bank which fails to maintain a Reserve Fund in accordance with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Restrictions on declaration of dividend

30. (1) A bank shall not declare or pay dividend on its shares unless it has,

- (a) completely written-off all its capitalised expenditure,
- (b) made the required provisions for non-performing loans and other erosions in assets values,
- (c) satisfied the minimum capital adequacy ratio requirement, and
- (d) completely written-off all its accumulated operating losses from its normal operations.

(2) For the purposes of subsection (1), "capitalised expenditure" includes preliminary expenses, share selling commission, brokerage losses incurred by the bank and any other item of expenditure not represented by tangible assets.

(3) Where the payment of dividend results in withdrawal of a part of the free reserves due to inadequacy of the profit for the year or where the statutory report of the auditors on the annual accounts of the bank is not satisfactory, the bank may declare a dividend on its shares only after obtaining the prior approval in writing of the Bank of Ghana.

(4) Where a bank declares or pays a dividend in contravention of subsection (1) each director of the bank is liable to pay to the Bank of Ghana a penalty of not less than 100 penalty units.

(5) A director is not liable to pay the penalty if

- (a) the contravention was committed without the director's consent or connivance by a person other than the director,
- (b) the director exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.

(6) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

PART IV—LIQUIDITY

Maintenance of liquid assets

31. (1) The Bank of Ghana may prescribe
- (a) that a bank shall hold liquid assets of a specific amount and composition,
 - (b) the amount provided for under paragraph (a) either as a certain percentage of all the bank's deposit liabilities or in any other manner, and
 - (c) different percentages for different classes of deposits or assets, as the Bank of Ghana may determine in any particular case.

(2) Where a doubt arises as to whether a particular liability of a bank is to be regarded as a deposit, the doubt shall be resolved by the Bank of Ghana.

(3) A bank shall, at a time and in respect of a period that the Bank of Ghana may require, submit to the Bank of Ghana a report on the liquid assets of the bank.

(4) A prescription by the Bank of Ghana under this section shall be by notice addressed to the bank and may be published in the *Gazette*.

(5) A bank which fails to comply with the requirement under subsection (3) shall pay to the Bank of Ghana a fine not exceeding 250 penalty units.

Notification of non-compliance with minimum liquidity requirements

32. A bank which fails to comply with the required liquidity ratio shall promptly notify the Bank of Ghana of the non-compliance and provide the Bank of Ghana with the particulars of the non-compliance.

Penalties for non-compliance with liquidity requirements

33. (1) A bank which fails to hold liquid assets in accordance with section 31 commits an offence and is liable in addition to any other penalty to pay interest to the Bank of Ghana at a rate to be prescribed by the Bank of Ghana on the difference between the total amount of liquid assets which it is required to hold and the total amount of liquid assets held by it, in respect of a period during which a difference exists.

- (2) The Bank of Ghana may direct that during a period specified in the direction, the bank
- (a) shall discontinue or limit in a manner specified, the granting of credit or the making of investments or capital expenditure, and
 - (b) shall not distribute dividends to its shareholders.

(3) A bank which makes a fresh advance to a person during the existence of a deficiency in the amount specified of its liquid assets without the approval of the Bank of Ghana shall pay to the Bank of Ghana a fine not exceeding 500 penalty units.

(4) A bank which contravenes a provision of this section shall, in addition, be liable to pay to the Bank of Ghana,

(a) in the case of a contravention of subsection (1), a penalty in respect of each day during which the deficiency continues, of an amount calculated as one half per mille of the deficiency which exists on that day; and

(b) in the case of a contravention of subsection (3), a fine of not less than 40 penalty units for each day that the contravention continues.

(5) The Bank of Ghana may require a bank operating in the country to furnish by a specified date information and in a form that it may consider appropriate to ensure compliance with the requirements of this section.

(6) A bank which fails to furnish the information required under subsection (5) within the period specified shall pay to the Bank of Ghana a fine not exceeding 250 penalty units for each day during which the default continues.

(7) The Bank of Ghana may also levy on the directors or chief executive officer of the non-compliant bank or both, a penalty in respect of each day during which the deficiency continues of an amount calculated as one half per mille of the deficiency which exists on that day or any other amounts that the Bank of Ghana may consider appropriate.

PART V—OWNERSHIP AND CONTROL

Transfer of shares affecting significant shareholdings

34. A person

(a) shall not acquire, directly or indirectly, shares in a bank which, together with existing direct or indirect holdings of that person, constitute a significant shareholding, or

(b) who has a significant shareholding, directly or indirectly, in a bank, shall not sell or dispose of shares in the bank to any other person whether or not by virtue of the sale or disposal that person ceases to have significant shareholding in the bank,

unless the Bank of Ghana is notified within three months by that bank of the acquisition or disposal and that bank obtains the prior approval in writing of the Bank of Ghana.

Disapproval of transfer of shares

35. The Bank of Ghana may disapprove a proposed transfer of shares in the interest of sound and prudent management of a bank by preventing

- (a) the acquisition by a person who, in the opinion of the Bank of Ghana, may exercise influence to the detriment of that bank,
- (b) the sale or disposal of shares by a promoter or a director, or a person who has a controlling interest which could be detrimental to that bank, or
- (c) a transaction in any other situation in which the Bank of Ghana has reason to believe that the transaction will be detrimental to that bank.

Prohibition of transfers of, and changes in, the controlling interests

36. (1) A person shall not enter into an agreement or arrangement
- (a) which will result in a change in the control of a bank or its holding company,
 - (b) for the sale, disposal or transfer of the whole or a part of the business of a bank,
 - (c) for the amalgamation or merger of a bank with any other bank or institution,
 - (d) for the reconstruction of a bank,

unless the parties to the agreement or arrangement have submitted an application on the proposed agreement or arrangement and all other relevant information and documents for the approval of the Bank of Ghana.

(2) The Bank of Ghana may in writing require the applicants or any of them or any person who is a director or manager of any of the applicants to provide any additional information or documents.

(3) Upon receiving the application and any other information and documents in accordance with subsection (2), the Bank of Ghana may consider the application and refuse or approve it.

(4) Where the application is approved, it may be made subject to the modifications, variations or conditions that the Bank of Ghana may prescribe.

Penalties for non-compliance

37. (1) Where the Bank of Ghana is satisfied that a person has contravened a provision of section 34, 35 or 36, it may by directive

- (a) annul the transfer, merger, amalgamation or reconstruction,
- (b) prohibit the exercise of voting rights in respect of the shares, or
- (c) prohibit the payment of dividend in respect of the shares, or
- (d) prohibit the issue of 'bonus shares' or 'rights issue' in respect of the shares.

(2) A directive issued by the Bank of Ghana under subsection (1), shall be in writing and shall be binding on the parties to the share transfer and the bank concerned.

Disqualification of directors, officers or employees

38. (1) A person shall not be appointed or elected, or accept appointment or election, as a director, chief executive officer or employee of a bank, if that person

- (a) has been declared to be of unsound mind or is detained as a criminal lunatic under any law in force in Ghana,
- (b) has been declared insolvent, has entered into terms with any person for payment of that person's debt or has suspended payment of the person's debt;
- (c) is convicted of an offence involving fraud, dishonesty or moral turpitude,
- (d) has been a director or manager or associated with the management of an institution which is being or has been wound up by a court of competent jurisdiction due to offences committed under a law or a bankruptcy,
- (e) is a director of another bank,
- (f) is under the age of eighteen years, or
- (g) is not, in the opinion of the Bank of Ghana, a fit and proper person to be a director.

(2) Where a person is subject to a disqualification under subsection (1) that person shall immediately cease to hold office and the bank shall immediately terminate the appointment of that person.

(3) A person who contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 250 penalty units or to a term of imprisonment not exceeding 12 months.

Disclosure of interest

39. (1) A person shall, before assuming office as a director of a bank, declare to that bank, that person's

- (a) professional interests or the offices that person holds as manager, director, trustee or by any other designation, and
- (b) investment or business interests in firms, companies and institutions, as a significant shareholder, director, partner, proprietor or guarantor, with a view to prevent a conflict of interest with that person's duties or interests as a director of the bank.

(2) A director of a bank shall, during the tenure of office as a director of the bank, declare to the board of directors of the bank, the changes in the director's business interests or holding of offices as and when they occur.

(3) A director of a bank who has, directly or indirectly,

- (a) an interest in a proposed credit facility to be given to a person by the bank, or

(b) an interest in a transaction that is proposed to be entered into with any other person, shall immediately declare the nature and the extent of that interest to the board of directors and shall not take part in the deliberations and the decision of the board of directors with respect to that request.

(4) A declaration under subsection (3) shall form part of the proceedings of the meeting of the board of directors.

(5) A proposal in which a director has interest, directly or indirectly, shall be considered and decided upon by the board of directors.

(6) A person who contravenes a provision of this section ceases to be a director of the bank and the participation of that person in an approval by the board of directors renders the approval unenforceable.

Intervention of the Bank of Ghana in appointments

40. (1) A bank shall give prior notice to the Bank of Ghana before it appoints a Managing Director or Deputy Managing Director of the bank, each of whom shall be ordinarily resident in the country.

(2) The managing director shall be the chief executive of the bank.

(3) Where the managing director is unable to perform the functions of the chief executive due to illness, absence from the country or any other sufficient cause, the deputy managing director of the bank shall after notifying the Bank of Ghana, act as the chief executive.

(4) A bank shall promptly notify the Bank of Ghana of the changes in the membership of the board of directors.

(5) Where the Bank of Ghana considers that a director is not a fit and proper person, it shall direct the removal of the director after hearing the bank.

(6) A bank which contravenes subsection (1) or (4) shall pay to the Bank of Ghana a fine of 1000 penalty units.

PART VI—RESTRICTIONS ON LENDING AND INVESTMENTS

Prohibition of advances against security of own shares

41. (1) A bank shall not grant any advances, loans or credit facilities including guarantees, against the security of,

(a) its own shares,

(b) the shares of its holding company,

(c) the shares of any of its subsidiaries, or

(d) the shares of any of the subsidiaries of its holding company.

(2) A bank which contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Limits on exposures

42. (1) A bank shall not take financial exposure in respect of any one person or a group of persons which constitutes in the aggregate a liability to the bank amounting to more than twenty-five per cent of the net own funds of the bank.

(2) For the purposes of subsection (1), the limits of the aggregate of unsecured financial exposure shall not exceed ten per cent of the bank's net own funds.

(3) Subsection (1) does not apply to transactions between banks and licensed non-banking financial institutions except otherwise specified by the Bank of Ghana.

(4) A bank which assumes financial exposure in contravention of subsection (1) shall pay to the Bank of Ghana a fine of 1000 penalty units.

Restrictions on exposure

43. (1) A bank shall not take unsecured financial exposure in respect of any of its

- (a) directors or significant shareholders,
- (b) firms or companies in which a director or a significant shareholder is interested as director, controlling shareholder, partner, proprietor, employee or guarantor,
- (c) holding or subsidiary companies of the company in which a director is interested, or
- (d) directors' relatives or significant shareholders' relatives,

unless the prior written approval of the Bank of Ghana is obtained in respect of that unsecured exposure.

(2) Where the financial exposure is on secured basis, the aggregate liability to the bank in respect of a director or significant shareholder or their related parties, as indicated in subsection (1), shall not exceed ten per cent of the bank's net own funds.

(3) The board of the bank shall be the only authority to approve or sanction any financial exposures of the bank to any of its directors or significant shareholders or related parties specified in subsections (1) and (2).

(4) The financial exposure of a bank shall not be written off or waived fully or partially, without the sanction of the bank's board and the prior approval in writing of the Bank of Ghana.

(5) A bank which contravenes a provision of this section shall pay to the Bank of Ghana a fine of 1000 penalty units.

(6) For the purposes of this section "relative" includes spouse, son, daughter, step son, step daughter, brother, sister, father and mother.

Restrictions on lending to staff

44. (1) A bank shall not grant to any of its officers and employees any unsecured advances or credit facilities, the aggregate amount of which exceeds two years' salary of the officer or employee.

(2) In the case of advances granted to an executive officer of a bank or related parties, the limitations that are applicable to directors under subsections (1) to (5) of section 43 shall apply to the executive officer.

(3) A bank which grants unsecured advances or credit facilities in contravention of subsection (1) is liable to pay to the Bank of Ghana a fine of an amount calculated as one-half per mille of the over-exposure which exists on that day and shall in addition be liable to pay to the Bank of Ghana a penalty not exceeding 1000 penalty units.

Requirements for lending to related parties

45. (1) In considering the approval of credit facilities to any of its directors, executive officers or the persons connected to them, under sections 43 and 44(2), a bank shall satisfy itself that

- (a) the person to whom the credit facility is given has credit worthiness which is not less than that normally required by the bank or other persons to whom credit facilities are given;
- (b) the terms of the credit facility are not less favourable to the bank than those normally offered to other persons; and
- (c) the giving of the credit facility is in the interests of the bank.

(2) The credit facility shall be approved by all other directors of the bank at a duly constituted meeting of the directors where not less than three quarters of all the directors of the bank are present and the approval has been recorded in the minutes of that meeting.

(3) A bank which contravenes subsections (1) and (2) shall pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Restriction on establishment of subsidiary company

46. (1) A bank shall not establish a subsidiary company without the prior approval in writing of the Bank of Ghana.

(2) A bank which establishes a subsidiary company contrary to subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Limits on investment in respect of subsidiary companies

47. (1) The equity capital invested by a bank in its subsidiary company shall not exceed fifteen per cent of the net own funds of the bank.

(2) Where the bank has more than one subsidiary company, the aggregate of equity capital invested in all the subsidiary companies by the bank shall not exceed twenty-five per cent of its net own funds.

(3) The aggregate amount of financial exposure including the credit facilities which a bank may take in respect of its subsidiaries, shall not exceed

- (a) twenty-five per cent of the bank's net own funds where the bank has only one subsidiary company, or
- (b) thirty-five per cent of the bank's net own funds where the bank has more than one subsidiary company.

(4) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Limits on investment in respect of other institutions

48. (1) A bank shall not invest or hold investments in the share capital of a body corporate or an institution other than its subsidiaries, the aggregate amount of which exceeds ten per cent of the net own funds of the bank.

(2) A bank which contravenes subsection (1) is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Reporting of large exposures

49. (1) A bank shall report to the Bank of Ghana, the particulars of each large financial exposure, in the form and at the intervals, that the Bank of Ghana may require.

(2) A bank which fails to comply with subsection (1) is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Powers to vary the prudential limits

50. The Bank of Ghana may vary any of the prudential limits that are prescribed under the various provisions of Part VI, for all the banks or a particular bank, for the period that the Bank of Ghana thinks fit.

PART VII—POWERS OF SUPERVISION AND CONTROL

Regulations

51. The Minister may, after consultation with the Bank of Ghana, by legislative instrument make regulations prescribing anything required or authorised to be prescribed under this Act or such regulations as may be necessary to give full effect to the provisions of this Act.

Directives

52. (1) The Bank of Ghana may issue directives to banks generally or to a particular bank where the Bank of Ghana is satisfied that

- (a) it is necessary to secure the proper management of a bank generally,
- (b) it is necessary to prevent the affairs of a bank being conducted in a manner detrimental to the interests of depositors or prejudicial to the interests of the bank, or
- (c) it is necessary in the interests of bank policy.

(2) Bank of Ghana may issue directives providing for:

- (a) accounting, management information and internal controls including,
 - (i) the accuracy and reliability of the accounting system in general, and the completion of the prudential returns of the banking supervision department,
 - (ii) the effectiveness of management information systems, and
 - (iii) the effectiveness and enforcement of internal controls;
- (b) comments to be made on the financial accounts of the bank which shall contain, among others,
 - (i) the financial performance of the bank during a period under review including the reliability and composition of reported earnings, the breakdown and analysis of operating costs, the liquidity and capital adequacy ratios,
 - (ii) the accounting policies and valuation criteria applied in the preparation of the accounts,
 - (iii) re-classifications and other adjustments made by the auditors to the accounts originally submitted for audit,
 - (iv) details of the adjustments not made to the accounts because they are not considered to be material,
 - (v) details of the areas where the manual of accounting for banks issued by the Bank of Ghana has not been complied with,
 - (vi) the full accounts of the bank for the period under review;
- (c) regarding the adequacy of provisions made
 - (i) against the advances portfolio investment and other asset accounts,
 - (ii) against off-balance sheet items, and
 - (iii) for credits, accruals and other liabilities;
- (d) audit work including
 - (i) the adequacy of work undertaken by the bank's internal audit department, and

- (ii) the amount of audit work undertaken in particular areas including scope of tests, sampling criteria, coverage achieved, extended work, confirmation exercise with third parties.

(3) The Bank of Ghana may modify a directive issued under subsections (1) and (2) as it considers fit and those banks or that bank shall comply with the modification.

(4) A bank which fails to comply with the Bank of Ghana directives is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Information and periodic returns

53. (1) The Bank of Ghana shall, for the purposes of supervision, require a bank to submit to it any information or data relating to the assets, liabilities, income, expenditure of that bank, or any of that bank's affairs, in the prescribed form, at an interval and within the times that the Bank of Ghana may stipulate and that bank shall comply with the requirement.

(2) The Bank of Ghana may impose fines not exceeding 500 penalty units on a bank for,

- (a) non submission,
- (b) incomplete submission,
- (c) delayed submission, or
- (d) inaccurate submission,

of the required information, data, statements or returns.

On-site examination

54. (1) The Bank of Ghana shall, without prior notice, carry out an examination of the operations and affairs of a bank, with reference to its books and records including documents, at intervals of not less than once a year.

(2) The examination shall be carried out in a month of the year as the Bank of Ghana may consider appropriate.

Investigation or scrutiny

55. Without prejudice to its powers to examine banks under section 54, the Bank may carry out investigations or scrutiny into a specific matter relating to a bank's affairs and for that purpose the Bank of Ghana shall have the necessary powers.

Power of on-site examiners

56. (1) A person who is authorised by the Head of Banking Supervision to examine or investigate or for any other purpose, shall have a right of access to the bank's books and records including documents,

minute books, customer files, personnel files, cash and securities and information in an electronic medium, and the bank shall cooperate and assist that person.

(2) A person who is authorised by the Head of Banking Supervision to examine or investigate or for any other purpose shall have a right to call upon any director, officer or any other employee of a bank to furnish that person any information and explanation which that authorised person may consider necessary and that official shall comply.

(3) A person who is authorised by the Head of Banking Supervision may, if that person considers it necessary in the course of an examination or investigation of a bank, order any bank official or employee, orally or in writing, to attend before that authorised person and testify in relation to a matter under examination and the bank official or employee shall comply with the order.

(4) A non-compliance with a requirement of subsections (1) to (3) or obstructing the authorised person from discharging those duties, is an offence under this Act.

(5) A bank which or a person who fails to comply with any provision of this section is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Taking custody of records

57. (1) An official of the Bank of Ghana, who is authorised to carry out an examination or investigation of a bank may, if that official considers it necessary, by an order in writing issued to the chief executive of that bank, take custody of any records, files or any other documents relevant to the examination or investigation after giving to that bank due acknowledgement in writing.

(2) The Bank of Ghana official authorised under subsection (1) shall take reasonable care to protect that document in that official's custody and account for its disposal.

Verification of information

58. (1) The Head of Banking Supervision may authorise any of its officials or qualified auditors to verify with reference to a bank's books and records, any return, information or data furnished to it by that bank and report on its accuracy.

(2) The bank shall provide access and facilities to the authorised official or auditor to carry out the official's or auditor's task.

(3) A bank which fails to provide access and facilities to the authorised officer is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

On-site examination reports

59. (1) Where an examination has been conducted by the Bank of Ghana under section 54, the Bank of Ghana shall furnish a copy of its report to the bank and call upon the bank to provide within thirty days

from the date of the receipt of the report a written explanation on the findings contained in the report and action taken, within a specified time.

(2) A bank which fails to submit its explanation under subsection (1) is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Follow-up action on on-site examination reports

60. (1) The Bank of Ghana may, after examining a bank's explanation issue a directive based on the explanation to that bank to take the remedial action that the Bank of Ghana may specify and that bank shall comply with the directive.

(2) A bank which fails to comply with a directive under subsection (1), is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Banks to co-operate with conservator

61. (1) Each director and official of the bank shall co-operate and assist the conservator to carry out the conservator's responsibilities under this Act.

(2) A director or bank official who obstructs the conservator in the performance of the conservator's functions commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to a term of imprisonment not exceeding 2 years.

Mandatory revocation of banking licence

62. (1) The Bank of Ghana shall revoke the licence given to a bank to carry on banking business when the entire capital base of the bank is eroded and the liabilities exceed the assets unless the shareholders are able to inject additional capital to restore the bank to normalcy within six months from the time of the capital erosion.

(2) On the revocation of the licence under subsection (1), the Bank of Ghana shall impose a moratorium under section 65 and petition the High Court for the winding up of the bank.

Hearing of banks in matters relating to revocation of licence

63. (1) When the Bank of Ghana intends to take an action under section 62, it shall give notice in writing to the bank or to the director or the managing director, and give the bank and that director or managing director an opportunity to submit any explanations within a specified time.

(2) Notwithstanding subsection (1), if the Bank of Ghana is of the opinion that delaying the intended action is not in the interests of the bank, it may proceed with its intended action and give a hearing to the persons affected by the action.

Issue of final orders after examining a bank

64. The Bank of Ghana may, after examining the explanations of the bank, the director or the managing director at any stage,

- (a) confirm the action already taken, or
- (b) decide to take the action indicated in the notice to the bank or to the persons affected by the action, or
- (c) modify the action, or
- (d) cease or refrain from taking any other action,

as it may consider fit and issue orders in writing accordingly.

Moratorium

65. (1) The Bank of Ghana may, if it

- (a) is satisfied that a bank is temporarily or otherwise not likely to meet its obligations in full to its depositors or creditors, or
- (b) intends to revoke a licence issued to a bank to carry on banking business,

order the bank to suspend banking operations including payments to depositors or creditors, either in full or partially, for a limited period not exceeding ninety days from the date of notice, to facilitate arrangements for orderly payments or pending decision on the bank's future set up.

(2) An order issued under subsection (1) may be extended for a further period not exceeding ninety days or modified as the Bank of Ghana may consider fit.

Appeal to Minister against orders of the Bank of Ghana

66. (1) A bank, the director or the managing director aggrieved by an order issued by the Bank of Ghana under section 65, may appeal or submit representations to the Minister of Finance, within fourteen days from the date of receipt of the Bank's order.

(2) The Minister shall give a hearing to the bank, the director, or the managing director and the Bank of Ghana and take a decision on the appeal or representations within one month from the date of receipt of the appeal or representations.

(3) The Minister shall not at any stage of the appeal or representations, make an interim order suspending operation of a moratorium order issued by the Bank of Ghana under section 65.

Ceasing of operations following revocation of licence

67. (1) Where the Bank of Ghana revokes a banking licence, the bank shall cease operations, if the bank has not ceased operation following an order of moratorium, and surrender the licence to the Bank of Ghana.

(2) A bank which fails to comply with subsection (1) commits an offence and every director is liable on summary conviction to a fine of not less than 1000 penalty units or in default, to a term of imprisonment not exceeding 5 years.

Winding up of bank and appointment of liquidator

68. (1) Where the Bank of Ghana

(a) has revoked the banking license of a bank, and

(b) is of the opinion that the bank is not likely to pay its depositors and creditors in full, it may, notwithstanding the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or any other law, appoint a liquidator to wind up the affairs of the affected bank.

(2) The Bank of Ghana shall by legislative instrument make regulations prescribing the procedure necessary to give effect to this section of the Act.

(3) A person who is not satisfied with the decision of the Bank of Ghana or of the liquidator may petition the Minister, who shall refer the matter to an official mediator for consideration.

(4) The Minister shall adopt the decision or the settlement terms of the mediation.

(5) Where the mediation fails to arrive at a settlement, the Minister shall decide the matter, taking into consideration the findings and conclusions of the mediation.

Voluntary winding-up

69. (1) Notwithstanding anything to the contrary in the Companies Code 1963 (Act 179) or any other law, a bank shall not voluntarily wind up unless the Bank of Ghana has certified in writing that the bank is able to meet its obligations in full to the depositors and creditors as the obligations accrue.

(2) If the Bank of Ghana, at any stage of the voluntary winding up, considers that the bank which is being wound up is unable to meet its obligations in full to depositors or creditors, the Bank of Ghana shall appoint a liquidator to wind up the affairs of the bank and the provisions of subsections (2) to (5) of section 68 shall apply.

PART VIII—ACCOUNTS AND AUDIT

Guidelines on accounting standards and disclosures in balance sheet and profit and loss account

70. (1) The Bank of Ghana may lay down the guidelines to be followed by banks in respect of accounting policies, practices, presentation of annual accounts and disclosure of information in the annual accounts.

(2) A bank which does not comply with subsection (1) shall pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Accounting records

71. (1) A bank shall keep accounting records in a manner that gives an accurate and reliable account of its transactions and the accounts prepared from the records shall give a true and fair view of the state of affairs of the bank and its results for the accounting period.

(2) The accounting records of the bank shall be kept at the bank's head office in Ghana.

(3) A bank which contravenes a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units.

Financial statements

72. (1) A bank shall prepare, at the expiration of each calendar year, in respect of the business transacted by it with reference to that year, financial statements comprising balance sheet, profit and loss account and cash flow statement.

(2) The financial statements referred to in subsection (1) shall be approved by the board of directors of the Bank and signed by at least two directors of the bank.

(3) A bank which fails to prepare a financial statement in accordance with this section is liable to pay to the Bank of Ghana, a fine not exceeding 1000 penalty units.

Audit of bank's accounting records

73. The balance sheet and profit and loss account referred to in section 73 and the accounting records of the bank for the period shall be audited by qualified auditors duly appointed in accordance with this Act.

Appointment of auditors

74. (1) An auditor of a bank shall, except as provided in subsection (2) of this section and subsection (2) of section 75 be appointed at an annual general meeting of the bank.

(2) The directors of a bank may appoint

(a) the first auditor of the bank; or

(b) an auditor to act in place of the auditor who is for any reason unable or unwilling to act until a new auditor is appointed at an annual general meeting or until the Bank of Ghana appoints an auditor under section 75(2).

(3) A person shall not be appointed an auditor of a bank unless that person

(a) is a member of the Institute of Chartered Accountants under the Chartered Accountants Act, 1963 (Act 170); or

(b) is not disqualified by a law in force in this country or in any other country from being appointed as an auditor of a body corporate.

The Bank of Ghana's powers to appoint auditors

75. (1) A bank which for a continuous period of three months is without an auditor shall notify the Bank of Ghana.

(2) The Bank of Ghana shall upon being notified under subsection (1) appoint an auditor for that bank to hold office until the next annual general meeting of that bank.

(3) A bank which fails to notify the Bank of Ghana as required under subsection (1) shall pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

Auditor's remuneration

76. (1) The remuneration of an auditor of a bank shall be determined in accordance with section 134(10) of the Companies Code, 1963 (Act 179).

(2) Where for any reason an auditor is appointed to fill a temporary vacancy in the office of the bank's auditor, that auditor shall be paid an equitable proportion of the remuneration fixed under subsection (1) as the bank, having regard to all the circumstances of the case, may determine.

Auditor's right to information

77. (1) An auditor of a bank shall have

- (a) a right of access to the accounting records, minutes book, files and other relevant documentary evidence, cash and securities of the bank, and
- (b) a right to request information and explanation from the directors, management, staff and appointed agents of the bank requisite for the efficient performance of the duties of the auditor.

(2) For the purposes of subsection (1) "accounting records" include computerised and manual files, vouchers, reports and other transactions of the bank.

Auditor's report

78. (1) An auditor of a bank shall submit

- (a) to that bank, and
- (b) to the Bank of Ghana,

at least once in every year, a statutory audit report and a long form audit report.

(2) The auditor shall state in the statutory report whether or not

- (a) the accounts give a true and fair view of the state of affairs of the bank and its results for the period under review;
- (b) the auditor was able to obtain all the information and explanation required for the efficient performance of the auditor's duties;
- (c) the bank's transactions are within the powers of the bank; and

(d) the bank has complied with the provisions of this Act.

(3) The auditor shall submit a long form audit report on the accounts and the affairs of the bank generally and in addition comment on the matters to be specified in Regulations made by the Bank of Ghana.

Special audit and additional information

79. The Bank of Ghana may, at the expense of a bank,

- (a) require the auditor to undertake a further audit or provide additional information or both as the Bank of Ghana considers necessary; or
- (b) engage an independent auditor to audit the whole or part of the accounts of the bank.

Termination of auditor's appointment

80. (1) An auditor of a bank shall cease to act as an auditor if

- (a) the Bank of Ghana in writing requests that bank to revoke the appointment of the auditor;
- (b) the auditor or a member of the auditor's firm or establishment becomes a director of that bank;
- (c) the auditor resigns by notice in writing to that bank;
- (d) the auditor ceases to qualify under section 74(3) for appointment as auditor of a bank; or
- (e) the auditor is otherwise removed by a decision taken at an annual general meeting of that bank.

(2) A bank shall comply with a request of the Bank of Ghana that the appointment of an auditor be revoked.

(3) An auditor who does not comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 250 penalty units or to a term of imprisonment not exceeding 12 months.

Display of financial statements

81. (1) A bank shall

- (a) exhibit at each one of its branches or agencies in a conspicuous place throughout the year, a copy of the last audited financial statements in respect of the operations of the bank;
- (b) not later than three months after the end of its financial year,
 - (i) furnish the Bank of Ghana with a copy of its audited financial statements together with the auditor's statutory and long form audit reports; and

- (ii) cause the financial statements together with the auditors' certificates to be published in a daily newspaper circulating in Ghana.
- (2) A bank which fails to comply with this section is liable to pay to the Bank of Ghana a fine not exceeding 1000 penalty units.

PART IX—MISCELLANEOUS

Prohibition of floating charge

82. (1) A bank shall not create a floating charge on an undertaking or a property of the bank or part of the property of the bank.

(2) A floating charge created under subsection (1) is of no legal effect.

(3) A bank which creates a floating charge in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 1000 penalty units.

Secrecy of information

83. A director, an officer or any other employee of the Bank of Ghana shall not disclose to any other person information relating to the affairs of a bank except as required by law or by a court of competent jurisdiction or by global banking supervisory practices.

Secrecy of customer information

84. A director, an officer or any other employee of a bank shall not disclose an information relating to the affairs of a customer with that bank except where the disclosure of the information is required by law or by a court of competent jurisdiction or the Bank of Ghana or is authorised by the customer or is in the interests of that bank.

Disclosure by the Bank of Ghana of information relating to banks

85. Notwithstanding the provisions of any other section, the Bank of Ghana may

- (a) publish information obtained by it from the banks, in a consolidated form as it considers fit in the public interest, and
- (b) share supervisory information, on a confidential basis, with other official agencies, both domestic and foreign, responsible for the safety and soundness of the financial system, if the information is used only for purposes related to the effective supervision of the institutions concerned.

Submission of reports on trend and progress

86. (1) The Bank of Ghana shall, not later than one hundred and twenty days after the end of its financial year, submit to the Minister a report on the trend and progress of the business of banking in the country.

(2) The Bank of Ghana shall include in the report the recommendations that it considers necessary in the interest of the business of banking in the country.

Protection for officials

87. (1) An action or claim shall not be brought against a director or an employee of the Bank of Ghana in respect of an act done in good faith by the director or employee in the course of the director's or employee's duty under this Act.

(2) Subsection (1) is not applicable where the action or claim arises out of the negligence or a wrongful act of the director or employee of the Bank of Ghana.

Offences and penalties

88. (1) The Attorney-General may, by executive instrument, authorise such officers as shall be specified in the instrument to prosecute offences that arise under this Act.

(2) Where a body of persons is convicted of an offence under this Act, then,

(a) in the case of a body corporate other than a partnership, every director and officer of that body shall be deemed to have committed the offence; and

(b) in the case of a partnership, every partner shall be deemed to have committed the offence.

(3) A person shall not be convicted by virtue of subsection (2), if that person proves that the offence was committed without the consent or connivance of that person and that due diligence to prevent the commission of the offence had been exercised having regard to all the circumstances.

Joinder of offences

89. Notwithstanding anything contained in any other enactment, where a person is accused of more than one offence under this Act, that person may be charged with and tried at one trial for any number of those offences committed within any length of time.

Interpretation

90. In this Act, unless the context otherwise requires,

"applicant" means a body corporate;

"the Bank" means the Bank of Ghana;

"bank" means a body corporate which is issued with a licence in accordance with this Act to carry on banking business;

"banking business" means

- (a) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means;
- (b) financing, whether in whole or in part or by way of short, medium or long term loans or advances, of trade, industry commerce or agriculture and
- (c) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business.

"banking policy" means a policy which is specified by the Bank of Ghana in the interests of the banking system or in the interests of monetary stability or sound economic growth;

"capital adequacy ratio" of a bank is the ratio expressed as a percentage of its capital base to its risk weighted exposure;

"chief executive" in relation to a bank, means a person, by whatever name called, who is responsible, subject to the authority of a bank's board of directors, for the conduct and management of the business of the bank;

"connected lending" or "lending to related parties" means taking a financial exposure in respect of

- (a) directors or significant shareholders,
- (b) firms or companies in which a director or a significant shareholder is interested, directly or indirectly as director, controlling shareholder, partner, proprietor, employee or guarantor,
- (c) holding or subsidiary companies of the company in which a director or significant shareholder is interested, directly or indirectly, as director, controlling shareholder, partner, proprietor, employee or guarantor;

"controlling shareholding" means a direct or indirect holding in a bank

- (a) which represents more than fifty per cent of the capital or of the voting rights, or
- (b) which makes it possible to exercise a significant influence over the management of the bank in which a holding subsists;

"financial exposure" of a bank to a person, firm, body corporate, or any unincorporated body of persons, concern or combination of that person, firm, body corporate, or an unincorporated body of persons, concern or combination shall be taken to be the aggregate of

- (a) the loans, advances and credit facilities (including off-balance sheet obligations) given to that person, firm, body corporate, or an unincorporated body of persons, concern or combination, and

- (b) the value of the bank's holdings of shares and debentures and other debt securities issued by that person, firm, body corporate, or an unincorporated body of persons, concern or combination;

and in computing the financial exposure the following assets that may be held as collateral shall be deducted:

- (c) cash deposit;
- (d) lien on term deposit with the bank;
- (e) market value of Treasury Bills, Government Securities and Bank Securities, and
- (f) other securities approved by the Bank of Ghana;

"foreign bank" means a bank incorporated in Ghana in which not less than sixty per cent of the equity share capital is held by foreigners;

"large exposure" means financial exposure to a single borrower or group of connected borrowers that in the aggregate exceeds ten per cent of the bank's net own funds;

"Minister" means the Minister responsible for Finance;

"net own funds" means the sum total of share capital that has been paid-up, free reserves, including the reserves that have been created out of revaluation of fixed assets with the consent of the Bank of Ghana subject to netting out the accumulated losses and unwritten-off capitalised expenditure;

"net worth" means shareholders funds and includes stated capital, capital surplus from revaluation of assets and other reserves;

"prescribed" means prescribed by Regulations or Rules or directives issued by the Bank of Ghana;

"significant share holding" means a direct or indirect holding in a bank

- (a) which represents ten per cent or more of the capital or of the voting right, or
- (b) which makes it possible to exercise a significant influence over the management of the bank in which a holding subsists.

Repeal of Banking Law, 1989

91. (1) The Banking Law, 1989 (P.N.D.C.L. 225) is hereby repealed.

(2) Notwithstanding subsection (1), regulations, orders, directions, notifications, exemptions, approvals, decisions and other executive or administrative acts made, given or done under the repealed Law shall upon the coming into force of this Act continue in force until amended or repealed in accordance with this Act.

Validity of existing licences

92. (1) A bank licensed under the Banking Law, 1989 (P.N.D.C.L. 225) or established under any other Act or any other enactment and in existence before the commencement of this Act shall continue in existence subject to compliance with this Act.

(2) If a representative office of a foreign bank incorporated outside the country is already functioning on the date this Act comes into force, it shall take steps and obtain the required approval within ninety days, or close down its office.

MEMORANDUM

The object of this Bill is to revise the Banking Law, 1989 (P.N.D.C.L. 225) in order to lay down new rules which will reflect current international standards and ensure effective supervision and regulation of banking in Ghana.

The current Banking Law, 1989 (P.N.D.C.L. 225) which provides the legal framework for the Bank of Ghana to regulate the business of banking in Ghana is out-dated and needs a major overhaul in order to effectively and efficiently serve the needs of the banking system.

Government recognises that a vibrant and diversified financial sector in which an efficient and competitive banking system plays a central role in making payments and mobilising and allocating savings is a *sine qua non* for sustainable economic development. The experience of successful economies suggests that for the banking system to play its desired role, it must be dynamic and responsive to the interests and needs of the economy for good quality and cost-effective financial services.

Further, Government acknowledges efforts at the international level to develop principles, policies and procedures for effective banking supervision which has culminated in the adoption of the Basle Core Principles for Effective Banking Supervision (Basle Core Principles). The Principles are intended as a basic reference for banking supervisory authorities throughout the world and the Government believes that achieving consistency with them is a significant step in ensuring financial stability. The need to ensure that our banking system reflects current international policies and standards is underscored by the realisation that Government's efforts to attract investors, foreign and domestic, will be hampered unless the banking sector is perceived to be efficient and competitive, applying internationally agreed principles and standards.

Furthermore, Government accepts that the banking system should induce confidence in investors and depositors that their interests and assets will be safeguarded and that the banking industry is well regulated.

Against this backdrop, it has become necessary to undertake a comprehensive review of the existing law and to address perceived weaknesses in order to ensure financial stability by enhancing the regulatory capacity of the Bank of Ghana to perform its regulatory and supervisory role over the banking sector.

The present legislative reform is intended to strengthen the operational independence of the Bank of Ghana and to reduce political interference and involvement. Consequently, the proposed changes will result in the curtailment of the matters that require the prior approval of the Minister for Finance.

The Bill is also intended to ensure greater transparency in the regulatory framework for banking. In this connection, the Bill contains clear rules and procedures for banking supervision. This is intended to reduce arbitrariness and the discretionary powers of the Bank of Ghana as a regulatory body so that regulatory decisions can be seen to be certain, deliberate and unbiased.

The principal changes proposed in the Bill include the following

- (a)* the criteria for the grant or withdrawal of banking licence are clearly spelt out and the provisions are made enforceable without recourse to or approval of the Minister for Finance;
- (b)* the Bank of Ghana can suspend the operation of a bank for persistent failure to comply with standards and aggrieved persons can appeal to the Minister for Finance;
- (c)* the Capital Adequacy Requirement for banks has been increased from six per cent to ten per cent in line with international standards and practices as contained in the Basle Capital Accord in order to strengthen the Bank's capacity to absorb risks;
- (d)* the Bank of Ghana can vary or review the Capital Adequacy Requirement for banks without requiring the approval of the Minister for Finance;
- (e)* the Bank of Ghana is empowered to facilitate the merger of a distressed bank with a healthy bank or take any action it considers necessary without consulting the Minister for Finance;
- (f)* the Bank of Ghana's mandate to gather information both off and on site has been enhanced by the inclusion of additional powers to enforce its decisions;
- (g)* the Bank of Ghana has been given authority to review and reject as it considers appropriate any proposals to transfer significant ownership or controlling interest in existing banks to other parties;
- (h)* the Bank of Ghana is further endowed with powers to intervene in the appointment of managing directors and directors of banks to ensure strict adherence to the fit and proper test which demands that only persons of honesty, integrity and competence are appointed;

- (i) the Bank of Ghana can prevent the appointment of directors and senior management considered detrimental to the bank and depositors; and it is strengthened in its supervisory role, to prevent the affairs of a bank being conducted in a manner detrimental to investors and prejudicial to the bank.

It is expected that, when passed, this Bill will strengthen the Bank of Ghana to deliver a strong and effective banking supervision. It will also allow Ghana's banking laws to achieve consistency with emerging international principles and standards of banking supervision so as to ensure improved financial stability.

YAW OSAFO MAAFO, MP

Minister for Finance

Date: *2nd May, 2003.*